THURMAN OIL AND MINING CO.

IBLA 84-275 Decided February 26, 1986

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, declaring the Jasper B, Jasper C, and Jasper X unpatented mining claims abandoned and void for failure to timely file annual proof of labor or notice of intention to hold the claims. F-45701 through F-45703.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   BLM may properly declare an unpatented mining claim abandoned and void under sec. 314 of FLPMA, 43 U.S.C. § 1744 (1982), where the owner fails to timely file with BLM either evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30 of the calendar year following the first filing of such evidence or notice.

2. Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements.

3. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Statutes

   The purposes of applying FLPMA's filing provisions to claims located before the Act was passed -- to rid Federal lands of stale mining claims and to provide for centralized collection by Federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims -- are clearly

legitimate and, therefore, application of these provisions to claims located prior to FLPMA is permissible.

4. Constitutional Law: Due Process -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

The text of FLPMA itself provides a mining claimant with effective notice of the annual filing requirements. Individualized notices of filing deadlines are not required by the Constitution.

APPEARANCES: Sam Helms, project manager, for Thurman Oil and Mining Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Thurman Oil and Mining Company appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated December 20, 1983, which declared the Jasper B, Jasper C, and Jasper X unpatented placer mining claims (F-45701, F-45702, and F-45703) abandoned and void for failure to timely file either evidence of assessment work or a notice of intention to hold the claims for the calendar year 1979. 1/

In its decision BLM also stated that on November 14, 1978, the State of Alaska filed selection application F-43763. The filing of this application segregated all the lands in T. 7 N., R. 13 E., Fairbanks Meridian, which included the lands within appellant's claims, from all forms of appropriation, including locations and entry under the mining laws. Since the 1979 assessment affidavit or notice of intent to hold was not timely filed, BLM concluded that the State of Alaska application attached to these lands effective December 31, 1979.

The claims involved in this appeal were all located prior to the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1982). Therefore, under section 314 of FLPMA, it was necessary to both file a copy of the notice of location and also file either evidence of assessment work or a notice of intention to hold the claims on or before October 22, 1979. See 43 U.S.C. § 1744(a) and (b) (1982). Accordingly, Lon U. Mathis, appellant's predecessor-in-interest, caused the subject

1/ On Oct. 21, 1983, the United States District Court for the District of Nevada issued a decision declaring section 314(a) and (c) of FLPMA, 43 U.S.C. § 1744(a) and (c) (1982), unconstitutional insofar as they provide for a conclusive presumption of abandonment of mining claims for a failure to provide timely annual filings with BLM. Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). The United States appealed that decision to the Supreme Court of the United States.

During the pendency of that case before the Supreme Court, the Board suspended consideration of mining claim recordation appeals. On Apr. 1, 1985, the Supreme Court issued its decision in United States v. Locke, 105 S. Ct. 1785 (1985), reversing the decision of the district court and upholding the constitutionality of the recordation provisions of FLPMA.

claims to be recorded and filed proofs of labor in December 1978. The next affidavits of annual assessment work were filed with BLM on October 23, 1980. By quitclaim deed dated December 12, 1980, Mathis conveyed the claims to appellant. On April 19, 1982, the Alaska State Office, BLM, issued a decision in which it stated that the State of Alaska had filed selection application F-43763 on November 14, 1978, which embraced the lands in appellant's claims. BLM advised that the application would be suspended until the recordation of the mining claims had been processed. In December 1983 BLM issued its decision declaring the claims abandoned and void.

In its statement of reasons, appellant explains that on December 19, 1979, Mrs. Mathis was told by "a counter person" at BLM that the Deadwood Claims 2/ were owned by the State of Alaska and that it was not necessary to register the claims with BLM. Appellant states that in October 1980 BLM sent a letter to Mathis "asking him to come in to see them" and that when he went in BLM told him that "his claims were flagged" and that he could register the 1979 filing along with the 1980 filing. Appellant contends that its claims should not be affected by the rules imposed by FLPMA because its claims were located in 1970. Appellant asserts that BLM should have notified it prior to declaring the claims void.

On November 20, 1985, the Board issued an order directing BLM to investigate the circumstances of the alleged attempted filing in this case and to submit a report of that investigation to the Board, including a statement of the BLM Fairbanks Office policy in 1979 regarding section 314 filings presented for mining claims located on lands conveyed to the State or believed to have been conveyed to the State.

On December 30, 1985, BLM submitted its report stating:

> 1. Policy - In 1979, the policy was to accept any document presented to the employees in the Public Room.
>
> a. If the document was an affidavit of assessment work or notice of intention to hold, the status was not checked or verified but all affidavits were accepted. The affidavits were time stamped and in most cases a copy (with the time stamp) was given to the applicant.
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> b. If a notice of location was being filed, land status was checked. The applicant was informed if the area was closed to mineral location but notices of location were accepted if the applicant still wanted to file.
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> * * * * * * *
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> 3. Reference is made of a letter to Mr. Mathis from BLM concerning his claims. We find to evidence in our files of such a letter. BLM does not ask applicants to "come by" and "bring

2/ "Deadwood Claims" is apparently a reference to claims located in the area of Deadwood Creek, including the claims in this appeal.

> their paperwork" up-to-date. Our State Office in Anchorage does mail out a computer generated letter (Attachment A) each year to every mining claim applicant. This procedure was started in 1980.
>
> 4. Enclosed are abstracts for files F-45701, F-45702, and F-45703 showing no assessment was filed for 1984.
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> The Public Contact Representatives in the Public Room accept affidavits for filing and do not make the determination of whether or not a file is in good standing. Documents are accepted but if the affidavits are not current or if there is a possible status problem, the file is sent to adjudication for the necessary action. The Fairbanks District Office did not begin to adjudicate mining claims until 1983. Prior to 1983, all mineral problems were routed to the Alaska State Office in Anchorage. This was an extremely slow process due to the large number of files needing adjudicative action.

Appellant was served with a copy of BLM's report but filed no response thereto.

[1] First, the Board has consistently held, in conformance with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), and applicable regulations (43 CFR Subpart 3833), that the owner of an unpatented mining claim located on Federal land before October 21, 1976, must file with BLM before October 22, 1979, and "prior to December 31 of each year thereafter" either evidence of annual assessment work or a notice of intention to hold the claim. Failure to timely file is deemed conclusively to constitute an abandonment of the claim and renders it void. 43 U.S.C. § 1744(c) (1982); Augustine V. Manzanares, 87 IBLA 328 (1985); United States v. Ballas, 87 IBLA 88 (1985).

The Board has held in the past that the first filing of annual assessment work or notice of intention to hold triggers the subsequent annual filing requirement. Harvey A. Clifton, 60 IBLA 29 (1981). This ruling was followed by the Board in Oregon Portland Cement Co., 66 IBLA 204 (1982). However, the Board's ruling in Oregon Portland was reversed by decision of the United States District Court for the District of Alaska styled Oregon Portland Cement Co. v. Department of the Interior, 590 F. Supp. 52 (1984). Therein, the court held that the statutory language requiring the holder of a pre-FLPMA claim to file "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" evidence of assessment work or a notice of intent to hold the claim was properly interpreted as requiring one filing prior to October 22, 1979, and annual filings only thereafter. Id. at 57-59. The case was remanded to the Board to "take such further actions as are required by this opinion." Id. at 16. In Oregon Portland Cement Co. (On Judicial Remand), 84 IBLA 186 (1984), the Board vacated its earlier decision and reversed the BLM decision declaring 40 placer mining claims null and void for failure to file annual assessment work or a notice of intention to hold the claims within calendar year 1979.

Most recently, the United States Court of Appeals for the Ninth Circuit held that the Secretary's interpretation of section 314(a) of FLPMA to require the filing of evidence of annual assessment work or notice of intent to hold

beginning in the year following any initial filing of evidence of assessment work or notice of intention to hold a claim even within the 3-year period following October 21, 1976 was reasonable. NL Industries, Inc. v. Secretary of the Interior, No. 84-2344 (July 25, 1985). This case was initially before the Board as NL Baroid Petroleum Services, 60 IBLA 90 (1981). Therein, the Board affirmed a BLM decision declaring certain claims abandoned and void because NL Baroid had recorded the claims and filed evidence of assessment work in 1977 but failed to file affidavits of assessment work in calendar year 1978. That decision was reversed by the district court in NL Industries v. Watt, No. CIV-LV82-176-RDF (D. Nev. March 14, 1984). Although the Department did not seek review of that decision, All Minerals Corporation, an intervenor, did appeal. Its appeal resulted in the Ninth Circuit Court's decision reversing the district court's decision. The Ninth Circuit Court's decision also effectively overruled Oregon Portland Cement Co. v. Department of the Interior, supra. See Buck Wilson, 89 IBLA 143, 146 n.2 (1985).

The Ninth Circuit Court's decision in NL Industries is controlling here. In this case the first filing was made in December 1978; therefore, evidence of annual assessment work or a notice of intent was required to be filed on or before December 30, 1979. Since an affidavit of assessment or notice of intent was not filed on or before December 30, 1979, BLM properly declared the claims abandoned and void. 3/

[2] Appellant contends that its predecessor was misled by information received from BLM employees. Even assuming the truth of appellant's contentions, which seems unlikely in light of the report provided by BLM, reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Lyman Mining Co., 54 IBLA 165 (1981); John Plutt, Jr., 53 IBLA 313 (1981), and cases cited therein.

[3] Appellant also argues that it should not be compelled to comply with the requirements of section 314 of FLPMA because its claims were located prior to the enactment of the statute. In approving the retroactive application of FLPMA, the Supreme Court stated in United States v. Locke, supra at 1798-99:

> The purposes of applying FLPMA's filing provisions to claims located before the Act was passed -- to rid federal lands of stale mining claims and to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims -- are clearly legitimate. In addition, § 314(c) is a reasonable, if severe, means of furthering these goals; sanctioning with loss of their claims those claimants who fail to file provides a powerful motivation to comply with the filing requirements, while automatic invalidation for noncompliance enables federal

3/ The record now shows appellant failed to file evidence of assessment during calendar year 1984 on or before Dec. 30, 1984.

> land managers to know with certainty and ease whether a claim is currently valid. Finally, the restriction attached to the continued retention of a mining claim imposes the most minimal of burdens on claimants; they must simply file a paper once a year indicating that the required assessment work has been performed or that they intend to hold the claim. * * * As a result, Congress was well within its affirmative powers in enacting the filing requirements, in imposing the penalty of extinguishment set forth in § 314(c), and in applying the requirements and sanction to claims located before FLPMA was passed. [Footnote omitted.]

[4] Finally, appellant asserts that BLM should have notified it prior to declaring its claims void. In United States v. Locke, supra at 1799-1800, the Court answered a similar contention as follows:

> [T]he Act provides appellees [claim owners] with all the process that is their constitutional due. In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements.

See also Good Hope Development Co., 87 IBLA 341 (1985). The text of the statute itself provided appellant with effective notice of the annual filing requirements. The Court in Locke expressly overruled a determination by the lower court that individualized notice of the filing deadlines was constitutionally required. United States v. Locke, supra at 1800.

The land in issue is included in a state selection application filed by the State of Alaska on November 14, 1978, and reaffirmed and amended by the State on February 1, 1979. 4/ When appellant did not file its affidavit of assessment work by December 30, 1979, the selection application attached to the land in issue on December 31, 1979. It is well established that under Departmental regulations 43 CFR 2091.6-4 and 2627.4(b), a filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including appropriation under the mining law. Thomas C. Bay, 87 IBLA 194 (1985); Fred Thompson, 74 IBLA 231 (1983); W. Ted Hackett, 39 IBLA 28 (1979). A mining claim located on land which has been

4/ At the time the State filed its application, the lands were not available for selection. The lands were open to selection on Jan. 25, 1979, and on Feb. 1, 1979, the State reaffirmed and amended its selection applications, thereby making them valid. The filing of an amendment to an application can be deemed the refiling of the original application and the State's rights can be determined as though the original selection had been filed at the time of the filing of the amendment. State of Alaska, 73 I.D. 1, 11-13 (1966), aff'd, Udall v. Kalerak, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969).

segregated and closed to mineral entry is properly declared null and void ab initio. Ronald R. Kotowski, 82 IBLA 317 (1984). Assuming this land remains under selection, it is unavailable for mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge